IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7093 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAJID MOHAMMED SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7093 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR RC KODEKAR, AGP for Respondents No.3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/11/2004

ORAL JUDGEMENT

1. The petitioner has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 30.04.2004 passed by the Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation through his advocate on 16.06.2004, which has been received by the authority on 17.06.2004. It is submitted that said representation has been forwarded by the detaining authority to the State Govt. 18.06.2004 and it has been rejected by the State Govt. on 20.06.2004 and, therefore, there is a delay in considering the representation. Learned APP has fairly admitted the same.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, though the detenu has sent the representation on 16.06.2004 to the detaining authority, the same has been forwarded to the State Govt. on 18.06.2004. It appears that said representation has been rejected by the State Govt. on 20.06.2004 i.e. after a period of 02 days and no explanation has been putforward by the authority explaining satisfactorily the delay caused in deciding the representation. It is to be noted that delay is also caused in forwarding the representation. Therefore, in view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Even no

affidavit has been filed either by the State or by the detaining authority Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 30.04.2004 passed against the detenu Sajid Mohammed Shaikh is hereby quashed and set aside. The detenu is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly. Direct service is permitted.

[R.P.DHOLAKIA,J.]

(vijay)